

# **Explanatory Notes**

## **FOR**

### **Amendments To Be Moved During Consideration In Detail By The Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence**

#### **Casino Control and Other Legislation Amendment Bill 2022**

#### **Objectives of the Amendments**

The objectives of the amendments to be moved during consideration in detail of the Casino Control and Other Legislation Amendment Bill 2022 (the Bill) are to:

- increase and extend the disciplinary actions available to be imposed against a casino entity;
- ensure the State is not fettered in its ability to regulate casinos by having to pay compensation for taking regulatory action; and
- make other amendments related to taking disciplinary action against a casino entity.

An independent external review, led by the Honourable Robert Gotterson AO KC, was established on 30 June 2022 into the Queensland casino operations of The Star Entertainment Group Limited (Star) following allegations of money laundering, organised crime and other integrity issues at Star operated casinos in Queensland and New South Wales (NSW) (Gotterson Review).

The Gotterson Review was informed by public hearings and the findings and recommendations of Mr Adam Bell SC's review of The Star Pty Ltd, the licensee and operator of The Star Sydney casino (Bell Review). The Bell Review, the report of which was delivered on 31 August 2022, ultimately found that the licensee and operator of The Star Sydney and a number of its close associates, including Star, remain unsuitable to be associated with the management and operation of a casino in NSW.<sup>1</sup>

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<sup>1</sup> State of New South Wales 2022, Report of the Inquiry under section 143 of the *Casino Control Act 1992* (NSW).

Mr Gotterson delivered his report to the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence on 30 September 2022 ('Gotterson Review report'). He found that Treasury Brisbane and The Star Gold Coast casinos have been operated by their licensees (who are Star subsidiaries) in a way that is inconsistent with the objectives of the *Casino Control Act 1982* (Casino Control Act) by, among other things:

- allowing the illegal use of China Union Pay (CUP) cards by patrons to fund gambling under the guise of accommodation expenses (and misleading Star's own bank about the real nature of the CUP transactions);
- having a deficient anti-money laundering/counter-terrorism financing (AML/CTF) program; and
- encouraging persons excluded at the direction of the Police Commissioners in NSW and Victoria to gamble at Treasury Brisbane and The Star Gold Coast.<sup>2</sup>

The Gotterson Review report makes 12 recommendations for regulatory reform to enhance integrity, minimise the potential for gambling harm, and restore public confidence in casino operations. The recommendations include for example:

- imposing a supervision levy on casino licensees to help recover the costs associated with regulating casinos (Recommendation 9);
- providing for periodic reviews of a casino licence, including in relation to the suitability of relevant casino entities to continue to give effect to the casino licence and operate a casino, and for the costs of such reviews to be recoverable from the casino entities (Recommendation 10);
- providing for the appointment of a special manager for a casino entity as an optional form of disciplinary action (Recommendation 12); and
- introducing a range of harm minimisation measures in casinos such as carded play (Recommendation 1), mandatory pre-commitment (Recommendation 3), and a code of conduct for safer gambling (Recommendation 8).

On 6 October 2022, the Government provided its in-principle support for all 12 recommendations.

### ***Compensation for regulatory action***

A Queen's Wharf Brisbane Financial and Commitment Agreement (FCA) between the State and the licensee of The Star Brisbane, Destination Brisbane Consortium Integrated Resort Operations Pty Ltd (DBC), limits the way in which the State can regulate The Star Brisbane as it compels the State to compensate DBC if certain regulatory actions are taken without DBC's prior consent, and the effect of those regulatory actions result in a fall of DBC's earnings before interest, tax, depreciation and amortisation (EBITDA) of at least the prescribed amount.

To the extent there is any risk that implementation of the Gotterson Review report's recommendations may trigger the compensation provisions of the FCA, the Gotterson

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<sup>2</sup> The Hon. R W Gotterson AO KC 2022, External review of the Queensland operations of The Star Entertainment Group Limited.

Review report suggests (at paragraphs 621 to 629) that legislation be introduced to expressly negate the operation of those provisions as the State ought not to be fettered in its capacity to impose controls upon casinos in order to protect the public interest, and ensure safer gambling. To have to compensate a casino licensee in such circumstances would, according to the Gotterson Review report, be highly undesirable. Accordingly, the amendments proposed to the Bill seek to neutralise any compensation triggers, including in the FCA, that would hamper regulatory intervention.

Similar provisions under agreements between the NSW and Victorian Governments and their respective casino licensees/operators which would have required the State to pay compensation if it takes certain specified regulatory actions have been extinguished in those jurisdictions.

### *Casino disciplinary options*

Currently under the Casino Control Act, the disciplinary actions which may be taken against a casino entity where a ground for taking disciplinary action arises (including grounds relating to unsuitability) include issuing a direction to rectify, issuing a letter of censure, appointing an administrator, cancelling or suspending the casino licence, and directing the termination of a casino lease or casino management agreement. The Bill adds to these options the ability to make the letter of censure publicly available and impose a pecuniary penalty (of up to \$5 million by the Minister and up to \$50 million by the Governor in Council).

As the Gotterson Review's findings found far more egregious behaviour from Star than previously anticipated, the amendments proposed to the Bill seek to significantly increase the maximum pecuniary penalty which may be imposed by the Governor in Council to \$100 million. This maximum amount reflects the maximum penalty which may be imposed as a form of disciplinary action in Victoria, New South Wales, and Western Australia.

The amendments proposed to the Bill additionally seek to provide, in line with recommendation 12 of the Gotterson Review, for an additional disciplinary action of appointing a special manager for a casino entity in order to broaden the options available to the Governor in Council to address any finding of unsuitability and provide greater flexibility to the regulator. Under the proposed amendments, the Governor in Council would be able to appoint a special manager as a standalone disciplinary action or in conjunction with other disciplinary actions such as the suspension of a casino licence.

The special manager would be fully funded by the casino entity. The special manager would be empowered to monitor the casino entity and its day-to-day casino operations under a statutory power to enter and remain in any of the casino entity's premises connected to the casino operations of the entity. The special manager would be empowered to sit in at board meetings of the casino entity and its related (parent, subsidiaries or same parent) companies, and to access all documents and records of the casino entity as they pertain to the management and operations of a hotel-casino complex.

The special manager would also be empowered to issue directions to the casino entity, with which the casino entity must comply, to steer the entity away from maladministration and towards compliance with any statutory obligation applying to the entity. Importantly,

the special manager would be required to carry out investigations of the casino entity, at the direction of the Governor in Council, and report regularly on the casino entity's remediation so that further Government action can be taken.

The arrangement, which is based on similar approaches implemented in Victoria and Western Australia, provides additional flexibility to Government by providing it with a disciplinary action that, coupled with other disciplinary options, allow for the remediation of a licensee over time. For example, the amendments proposed to be moved during consideration in detail of the Bill would allow the Governor in Council to suspend or cancel a casino licence (or direct the suspension or termination of a casino management agreement) at a future date to allow for the orderly management of a finding of unsuitability. The Governor in Council could, in conjunction with this decision, appoint a special manager to ensure the affairs of the casino entity and its casino operations are conducted appropriately until the cancellation or suspension has taken effect.

Further, the Governor in Council could, prior to cancellation, termination or suspension taking effect, consider a recommendation of the Minister, which may only be made after consultation with the special manager, to rescind the cancellation, suspension or termination because the casino entity has been remediated. By the same token, if the special manager reports to the Minister at any time that remediation is not occurring or that an investigation of the special manager has uncovered further issues of non-compliance or maladministration, the Minister may recommend to the Governor in Council that the date of the suspension, cancellation or termination occur immediately.

The amendments also provide for the Minister to direct a casino entity to prepare a remediation plan which must address particular matters as contained in the Minister's written notice. If a special manager has been appointed to a casino entity, the special manager will have a range of functions regarding oversight of the plan, including, as above, reporting to the Minister on the progress of a casino entity in fulfilling the plan. The Minister may direct changes to the plan, with which the casino entity must comply. Significant penalties (maximum 400 penalty units) exist for casino entities that do not comply with the plan.

The ability of the Governor in Council to direct the *suspension* of a casino lease or casino management agreement, as referred to above, is also a result of these amendments (the current Casino Control Act allows only the termination of a lease or management agreement). A direction to suspend, rather than terminate, a lease or management agreement would be appropriate in circumstances where for example, it is necessary to de-complicate arrangements between casino entities (especially in the scenario where different parties act as a casino lessee, casino operator and casino licensee) in order to provide for the effective oversight of a special manager, particularly where a licence may be suspended and a remediation plan is in place for the casino entity.

In addition to appointing a special manager to remediate a licensee over time, the Governor in Council retains the ability to also appoint an administrator to operate a casino where a licence is suspended. The Governor in Council may also appoint an administrator to operate a casino when the licence is cancelled and arrangements must be made for dealing with the casino entity's assets.

As the Bill is intended to give the Government clearer and broader powers to determine and address unsuitability, the amendments proposed to the Bill are within the scope of the Bill.

## **Achievement of the Objectives**

### **Objective: To increase and extend the disciplinary actions available to be imposed against a casino entity**

The objective is achieved by:

- increasing the maximum pecuniary penalty that may be imposed by the Governor in Council on a casino entity that has engaged in behaviour that constitutes a ground for disciplinary action;
- providing for the appointment of a special manager for a casino entity as an optional form of disciplinary action in line with Recommendation 12 of the Gotterson Review report; and
- enabling the Minister to recommend, and the Governor in Council to direct, the suspension of a casino lease or casino management agreement.

#### *1. Increasing the maximum pecuniary penalty*

Under clause 9(9) of the Bill, the Governor in Council may order a casino entity to pay a maximum pecuniary penalty of \$50 million. Amendment 11 amends clause 9(9) of the Bill to increase the maximum pecuniary penalty which may be imposed to \$100 million.

Clause 9(9) of the Bill provides that the Minister may recommend the Governor in Council impose a pecuniary penalty of more than \$5 million on a casino entity. However, the Minister may wish to recommend a fine of less than \$5 million (perhaps in addition to a range of other disciplinary actions) but would not be able to do so. Accordingly, Amendment 9 amends clause 9(9) of the Bill to enable the Minister to recommend the Governor in Council impose a pecuniary penalty of any amount, but not more than \$100 million.

#### *2. Providing for the appointment of a special manager as an optional form of disciplinary action*

Amendment 12 provides the Governor in Council with the ability to appoint a special manager for the casino entity as a standalone disciplinary action or in conjunction with other disciplinary actions such as by deciding to:

- suspend a casino licence, either immediately or as of a future date, and appoint a special manager to monitor casino operations until the suspension commences, and throughout the suspension period until such time as the special manager's appointment is terminated; or
- cancel a casino licence at a future date and appoint a special manager to monitor the operations of the casino entity until the cancellation takes effect.

To assist in providing for the remediation of a casino entity under the oversight of a special manager, Amendment 13 provides that where the Governor in Council decides to suspend or cancel a casino licence or direct the suspension or termination of a casino lease or casino management agreement with the suspension, cancellation or termination to be effected on a future date, *and* appointed a special manager for the casino entity, the Governor in Council may, on the recommendation of the Minister, rescind the suspension, cancellation or termination before it takes effect if satisfied that the suspension, cancellation or termination is no longer required because of the remediation of the management and operations of the casino entity. The Governor in Council may also amend the date on which the suspension, cancellation or termination takes effect – for example, to effect cancellation sooner if a casino entity is recalcitrant and not observing its remediation plan, or to extend the cancellation date if progress towards remediation has been made but there is still a lot of work to be done by the casino entity.

The special manager serves a monitor/remedial role to monitor the affairs of the casino entity that is the subject of disciplinary action and the suitability, efficacy and implementation of the casino entity's remediation plan which must be approved by the Minister. Specifically, Amendment 19 which amends the Bill to insert new section 90D in the Casino Control Act specifies the special manager's functions are to:

- monitor the affairs of the casino entity in relation to the management and operations of a hotel-casino complex;
- consult on and advise in relation to the content and preparation of the casino entity's remediation plan;
- monitor the suitability and efficacy of the casino entity's remediation plan and the implementation of the plan; and
- report to the Minister and the chief executive on the suitability, efficacy and implementation of the remediation plan, and the progress of the casino entity in fulfilling its remediation plan; and
- perform any other functions specified in the special manager's instrument of appointment.

If the relevant casino licence has been cancelled or surrendered, the special manager's appointment ends by virtue of new section 90C(6) (as inserted by Amendment 19). This is because in such circumstances, there would be no need or purpose to remediate the casino entity and an administrator would be appointed.

The special manager has all the powers necessary to perform the special manager's functions. For example, new section 90E (as inserted by Amendment 19) provides the special manager may:

- issue directions to the casino entity, with which the casino entity must comply, to steer the entity away from maladministration and towards compliance with any statutory obligation applying to the entity;
- enter into and remain in any part of the hotel-casino complex and any other premises occupied by the casino entity in connection with its casino operations for the purpose of performing functions or exercising powers under new Part 9, Division 3;
- access all documents and records of the casino entity relating to the management and operations of a hotel-casino complex;

- attend any meeting of the casino entity's board, or a related casino entity's board, or any committee or subcommittee of such boards if the meeting relates to the management and operations of a hotel-casino complex;
- engage any person to provide advice or other services in connection with the performance of the special manager's functions; and
- request information from the casino entity that the special manager reasonably requires.

New section 90F (as inserted by Amendment 19) provides that the special manager must report to the Minister and the chief executive on the performance of the special manager's functions as requested by the Minister or chief executive or as required in the instrument of appointment.

3. *Enabling the Minister to recommend, and the Governor in Council to direct, the suspension of a casino lease or casino management agreement*

Currently, under the Casino Control Act, the Governor in Council may, at the recommendation of the Minister or in the Governor in Council's sole discretion, direct that the casino lease or casino management agreement be terminated as a form of disciplinary action.

Amendment 9 amends clause 9(9) of the Bill in relation to section 31 of the Casino Control Act to enable the Minister to recommend the Governor in Council *take one or more* of the prescribed disciplinary actions against a casino entity including the suspension of the casino lease or casino management agreement. The amendment is necessary to align with the Governor in Council's ability to impose one or more of the prescribed disciplinary actions under modified section 31(12) (as also provided under clause 9(9) of the Bill).

Amendment 13 amends clause 9(9) of the Bill in relation to section 31 of the Casino Control Act to enable the Governor in Council to direct the suspension of the casino lease or casino management agreement. The amendment broadens the disciplinary options available to be undertaken.

**Objective: To ensure the State is not fettered in its ability to regulate casinos by having to pay compensation for taking regulatory action**

Amendment 22 inserts a new section 114 in the Casino Control Act which provides that no compensation is payable by or on behalf of the State because of regulatory action that has an effect on:

- an entity that is or was concerned in, or otherwise connected to, the administration, management, operation or ownership of a hotel-casino complex or casino; or
- the revenue earned from casino operations.

The provision applies despite any other provision of the Casino Control Act, or any other Act, law or instrument (including an agreement to which the State and a casino entity are parties such as the FCA).

**Objective: To make other amendments related to taking disciplinary action against a casino entity**

Amendment 18 makes clear that in the event the casino licence is suspended, the obligation to pay a licence fee continues during the suspension period.

## **Alternative Ways of Achieving Policy Objectives**

There are no alternative ways for achieving the policy objectives.

## **Estimated Cost for Government Implementation**

There will be no cost for government in implementing the proposed amendments.

Amendment 19 which amends the Bill to insert new section 90G in the Casino Control Act provides the casino entity will be liable for all the reasonable costs and expenses:

- relating to the appointment of a special manager and the performance of the special manager's functions;
- incurred by the chief executive in administering the appointment of the special manager, assisting the special manager in the performance of the manager's functions, engaging consultants in relation to the special manager, and advising the Minister on the casino entity's plan for the remediation of the management and operations of the casino entity; and
- prescribed by regulation.

The casino entity may be required to pay to the State the costs and expenses in advance.

## **Consistency with Fundamental Legislative Principles**

The amendments proposed to the Bill have been drafted with regard to the fundamental legislative principles (FLPs) defined in section 4 of the *Legislative Standards Act 1992* (Legislative Standards Act). Particular amendments which raise concerns in relation to FLPs are discussed below.

### **Amendments to increase and extend the disciplinary options available**

#### Amendment 11 – Governor in Council's ability to impose a high pecuniary penalty

The Bill provides the Minister with the discretionary ability, following a show cause process, to impose a pecuniary penalty of up to \$5 million on a casino entity as a form of disciplinary action. If the Minister recommends to the Governor in Council that instead, a pecuniary penalty of more than \$5 million should be imposed or that the casino licence should be cancelled or suspended, or the casino lease or casino management agreement be terminated, the Bill provides that it is open for the Governor in Council to impose a non-reviewable pecuniary penalty of up to \$50 million on the casino entity being disciplined. Amendment 9 enables the Minister to recommend the Governor in Council impose a pecuniary penalty of not more than \$100 million be



imposed while Amendment 11 increases the maximum pecuniary penalty which may be imposed by the Governor in Council from \$50 million to \$100 million.

Section 4(2)(b) of the Legislative Standards Act provides that legislation should have sufficient regard to the institution of Parliament. Section 4(4)(a) provides that whether a Bill has sufficient regard to the institution of Parliament depends on whether the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons. Generally, in relation to the power to impose penalties, the more serious the consequences, the more likely it is that a penalty should be fixed by an Act of Parliament and imposed by the courts, and not simply by an administrative process. In this regard, the delegation of the determination of a pecuniary penalty (especially of a potentially high quantum) to the Governor in Council may be considered to be inconsistent with FLPs.

Additionally, section 4(2) of the Legislative Standards Act provides that legislation should have sufficient regard to the rights and liberties of individuals. A pertinent consideration is whether consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied. In this regard, it may be considered that an upper limit of \$100 million as a pecuniary penalty may be considered disproportionate.

As outlined in the FLP section of the explanatory notes to the Bill, casinos are highly regulated to ensure they are conducted with integrity and fairness, remain free from criminal influence and exploitation, and to minimise the potential for harm from gambling. There is therefore a need, in the public interest, to ensure that casino entities can be disciplined appropriately as circumstances warrant and as quickly as possible without those entities regarding the disciplinary action merely as a 'cost of doing business'. This objective could not be met if the Governor in Council does not have the discretion to consider whether a pecuniary penalty is warranted and to fix a fitting quantum.

Although the Governor in Council will have the discretion to fix a quantum up to \$100 million, the Bill provides some mandatory matters which must be considered, including the nature of the act or omission forming the basis of the grounds for taking the disciplinary action, whether the act or omission undermines the objects of the Casino Control Act, whether there is any loss to the State or the public, whether any disciplinary action has been taken against the casino entity before, and the seriousness of the grounds for taking the disciplinary action. Consideration of these matters will help ensure that the quantum is appropriate and reflects the severity of the act or omission relating to the ground for taking disciplinary action.

Increasing the maximum pecuniary penalty to \$100 million is not incongruent with the approaches taken in New South Wales, Victoria and Western Australia where the maximum pecuniary penalty which may be imposed on casino entities as a form of disciplinary action is also \$100 million.

Further, a pecuniary penalty with an upper limit of \$100 million is not considered disproportionate in relation to businesses whose actions or inactions can result in significant harm or consequences. The Gotterson Review report found for example, that Treasury Brisbane and The Star Gold Coast have been operated in a way that is

inconsistent with the achievement of the objectives of the Casino Control Act in relation to a range of matters. For example, the Gotterson Review found:

- Star permitted patrons to use China UnionPay (CUP) cards to fund gambling at its Queensland casinos under the guise of accommodation expenses and deliberately misled its own bank about the real nature of the CUP transactions;
- Star was insufficiently transparent with the Office of Liquor and Gaming Regulation when it sought changes to its internal control manual to remove references to CUP;
- Star’s management of excluded persons was seriously deficient and the failure to mirror NSW police exclusions had exposed its Queensland casinos to the risk of criminal infiltration or influence;
- Star had actively encouraged persons excluded at the direction of the Police Commissioners in NSW and Victoria to gamble at Queensland casino properties as well as persons it had grounds to suspect may have been involved in criminal activity; and
- Star’s anti-money laundering program was seriously deficient up until relatively recent times and remains deficient at least for its lack of clarity and discordance with the anti-money laundering regime’s risk ratings.

Amendment 15 – Governor in Council’s decision on disciplinary action (including to impose a high pecuniary penalty, appoint a special manager, and/or direct the suspension of the casino lease or casino management agreement) is non-reviewable

The Casino Control Act currently provides that the decision of the Governor in Council to cancel or suspend a casino licence or to direct the termination of a casino lease or casino management agreement is final and conclusive and shall not be appealed against, reviewed, quashed or in any way called in question in any court on any account whatsoever.

The Bill amends section 31 to provide that any decision by the Governor in Council to take disciplinary action against a casino entity is subject to the same finality including a decision to order a casino entity to pay a pecuniary penalty and/or appoint a special manager. To ensure the amendment to section 31(23) of the Act works efficiently, Amendment 15 applies the same finality to *any decision* of the Governor in Council under section 31.

Section 4(3)(a) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes the rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. Generally, it is inappropriate to provide for administrative decision making in legislation without providing for a review process particularly if the decision can lead to serious consequences. It may be argued that a decision by the Governor in Council to impose a pecuniary penalty of up to \$100 million, appoint a special manager and/or direct the suspension of a casino lease or casino management agreement can have significant ramifications and should therefore be reviewable.

It is considered justifiable that a Governor in Council decision to take disciplinary action (including by imposing a pecuniary penalty of up to \$100 million, appoint a special manager and/or direct the suspension of a casino lease or casino management

agreement) should be non-reviewable. As outlined in the FLP section of the explanatory notes to the Bill, the object of the Casino Control Act is to ensure that, on balance, the State and the community as a whole benefit from casino gambling. Where an act or omission by a casino entity is so serious that it warrants disciplinary action by the Governor in Council, it is necessary, on public interest grounds, for the Governor in Council's decision to be final and non-reviewable so that the casino entity can be disciplined as quickly as possible and with certainty.

The casino business is not a right but a revocable privilege. This highlights the importance that the State and the community place on ensuring casinos are conducted with the utmost integrity and fairness, remain free from criminal influence and exploitation (which is a significant risk for this industry) and to minimise the harm from gambling. The findings of the Gotterson Review report have highlighted egregious behaviour by Star. Should disciplinary action be required by the Governor in Council as a result of these findings, it is necessary for the Governor in Council's decision to be conclusive as the public would expect a resolute outcome.

#### Amendment 19 – Appointment of special manager and functions and powers of special manager

(i) Restricting casino operations

Pursuant to section 4(2) of the Legislative Standards Act, legislation should have sufficient regard to the rights and liberties of individuals. Generally, legislation should not, without sufficient justification, unduly restrict ordinary activities.

Amendment 12 enables the Governor in Council to appoint a special manager for a casino entity as a standalone disciplinary action or in conjunction with other disciplinary actions. If so appointed, a special manager would be empowered to monitor the casino entity and its day-to-day operations through, in part, a statutory power to enter and remain in any of the casino entity's premises connected to the casino operations of the entity. The special manager would be empowered to sit in at board meetings of the casino entity and its related companies and access all documents and records of the casino entity as they pertain to the management and operations of a hotel-casino complex.

Significantly, the special manager would also be empowered to issue directions to the casino entity, with which the casino entity must comply. These directions are limited to situations in which the special manager considers there has been maladministration, or that the direction is in the best interests of the entity, or that the direction is necessary to ensure compliance with any statutory obligation that applies to the entity. While this wide-ranging direction power is intended to function to the benefit of a casino entity, particularly as it pertains to remediation and a pathway back to remediation, the amendment may nevertheless be considered to intervene in a person's right to conduct business in the way they consider appropriate.

It has long been recognised that casinos are vulnerable to money laundering, criminal influence and exploitation, and have the potential to impose significant gambling harm. For these reasons, casinos are highly regulated in order to protect players and the community, and prevent criminal involvement or influence. This is recognised in the

object of the Casino Control Act which seek to ensure that, on balance, the State and the community as a whole benefit from casino gambling subject to a system of regulation and control.

In the event of misconduct or a finding of unsuitability, it would be desirable and in the public interest to have greater discretionary powers to monitor the casino entity's affairs as it relates to the management and operations of a hotel-casino complex. The special manager would be able to monitor and report to the Minister and chief executive on the suitability, efficacy and implementation of the casino entity's plan to remediate the management and operations of the casino entity and the casino entity's progress in fulfilling the plan. To provide a level of objective independence and rigour, it is essential for another person, other than the casino entity that was disciplined, to advise whether the casino entity's remediation plan will rectify the causes that contributed to the disciplinary action and whether the casino entity is on track with its plan.

(ii) Accessing casino property and documents

Section 4(3)(e) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Amendment 19 amends the Bill to insert a new section 90E which provides that the special manager has all the powers necessary to perform the special manager's functions. This includes entering into and remaining in any part of the hotel-casino complex and any other premises occupied by the casino entity in connection with its casino operations and accessing all documents and records of the casino entity relating to the management and operations of a hotel-casino complex. These powers may impact on individuals. For example, the special manager may enter an office occupied by an individual within the hotel-casino complex or any other premises occupied by the casino entity, or access documents or records created, maintained or kept by an individual who is an agent or employee of the casino entity.

It must firstly be noted that a special manager may only be appointed as a disciplinary action against a casino entity. Secondly, in order to perform the special manager's functions effectively, the special manager must be able to have wide ranging powers to assist in achieving the broader aim of ensuring casinos are operated properly and by suitable entities. Thirdly, the exercise of the access powers are appropriately limited – to property that is the hotel-casino complex or other property in connection with casino operations; and to documents and records relating to the management and operations of a hotel-casino complex.

(iii) Disclosing certain information to a special manager

Pursuant to section 4(2) of the Legislative Standards Act, legislation should have sufficient regard to the rights and liberties of individuals. The right to privacy is a relevant consideration to whether legislation has sufficient regard to individual rights and liberties.

Amendment 19 which inserts new section 90E provides that a special manager may, by written notice, require the casino operator to provide any information the special manager may require to perform the special manager's functions. The casino entity is not excused from complying on the ground the information being requested is the subject of legal professional privilege.

The amendment may be seen to limit the right to privacy by allowing the special manager access to information the special manager may not otherwise have been able to access due to legal professional privilege reasons.

Special managers are appointed to monitor and report on a casino entity's affairs as it relates to the management and operations of a hotel-casino complex, including in relation to the suitability, efficacy and implementation of the casino entity's remediation plan. To ensure that special managers have access to all necessary information, it is vital for new section 90E to allow a special manager access to all relevant information. While legal professional privilege is an important safeguard in democratic societies, it should not be used as a shield to prevent proper scrutiny of matters relating to the conduct of casino operations.

In this regard, it may be noted that the Bell Review report concluded that licensee of The Star Sydney was unsuitable to hold that licence. The Bell Review report found that there was "an unsatisfactory understanding of the circumstances in which legal professional privilege should be claimed among Star Entertainment's most senior in-house lawyers... Inappropriate claims for privilege increase the likelihood that documents will not be produced to regulators and others, when they should instead be disclosed" (at [101]).

The limitation on the right to privacy is therefore, required to ensure the special manager has all the powers necessary to effectively perform the special manager's functions.

However, the limitation on the right to privacy in relation to legal professional privilege is suitably moderated by clarifications that legal professional privilege continues to attach to any information provided to a special manager.

(iv) Unrestricted exercise of special manager's functions and powers

Section 4(3)(b) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether it is consistent with the principles of natural justice.

Amendment 19 which amends the Bill to insert new section 90I provides that, in performing a function or exercising a power, the special manager is not required to consult with the casino entity or any other person about how the function is to be performed or whether the power should be exercised. This includes giving an entity an opportunity to be heard before performing the function or exercising the power. The amendment is potentially inconsistent with section 4(3)(b) of the Legislative Standards Act on the basis that it excludes a right to be heard in relation to the exercise of the special manager's powers and functions.

However, the inconsistency with natural justice principles is considered justified on the basis that the appointment of the special manager is a disciplinary action that is taken when a casino entity has demonstrably failed to meet their regulatory obligations. It is also notable that the decision of the Governor in Council to appoint a special manager can only be made following a show cause process and is intended to be final.

The special manager's functions include monitoring the affairs of the casino entity and the suitability, efficacy and implementation of the entity's remediation plan. The remediation plan is approved by the Minister. In this context, denying the opportunity to be heard in relation to the exercise of the special manager's powers and functions is justified as it ensures the remediation process is not able to be delayed or frustrated by uncooperative casino entities.

### **Amendments to negate the compensation provisions of the FCA**

#### Amendment 22 – Negate compensation

Amendment 22 will override any compensation payable, including under the provisions of the FCA which were originally intended to provide DBC with regulatory certainty given the large capital expenditure that was to be committed by DBC to develop Queen's Wharf Brisbane. The amendment expressly provides that no compensation is payable by or on behalf of the State because of regulatory action that has an effect on:

- an entity that is or was concerned in, or otherwise connected to, the administration, management, operation or ownership of a hotel-casino complex or casino; or
- the revenue earned from casino operations.

The provision applies despite any other provision of the Casino Control Act or any other Act, law or instrument (including an agreement to which the State and a casino entity are parties).

Section 4(3)(g) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether legislation does not adversely affect rights and liberties. The termination of contractual rights via legislation may be considered to be a breach of FLPs.

The Gotterson Review report advised that the proper regulation of casinos requires that the State be free to impose reasonable controls on the operations of casinos and to adjust those controls as circumstances demand. However, the compensation provisions of the FCA expressly limit the actions that the State can take in relation to The Star Brisbane without DBC's consent. They may potentially hamper the State from giving effect to the recommendations of the Gotterson Review report as well as the State's ability to make future amendments to legislation to introduce stronger integrity and/or responsible gambling measures at a casino that are in the public interest. It also does not meet public expectations that the Government should have to pay compensation to casino operators for regulating them.

## Consultation

No consultation was undertaken.

## NOTES ON PROVISIONS

Amendment 1 amends clause 9(2) of the Bill to provide for a grammatical change necessary to accommodate clause 9(7)'s insertion of a subsection (da), later to be renumbered subsection (f).

Amendment 2 amends clause 9(3) of the Bill to provide for a grammatical change necessary to accommodate clause 9(7)'s insertion of a subsection (da), later to be renumbered subsection (f).

Amendment 3 amends clause 9(3) of the Bill in relation to section 31 of the Casino Control Act to remove the word 'or'. The amendment is simply a grammatical change.

Amendment 4 amends the Bill to insert a new clause 9(3A). The new clause amends section 31 of the Casino Control Act to provide for a grammatical change necessary to accommodate clause 9(7)'s insertion of a subsection (da), later to be renumbered subsection (f).

Amendment 5 amends the Bill to insert new clauses 9(5A), (5B) and (5C). of the Bill to provide for a grammatical change necessary to accommodate clause 9(7)'s insertion of a subsection (da), later to be renumbered subsection (f).

Amendment 6 amends clause 9(7) of the Bill to remove the word 'or'. The amendment is simply a grammatical change.

Amendment 7 amends the Bill to insert new clause 9(7A). The new clause amends section 31 of the Casino Control Act to provide for a grammatical change necessary to accommodate clause 9(7)'s insertion of a subsection (da), later to be renumbered subsection (f).

Amendment 8 amends clause 9(9) of the Bill in relation to section 31 of the Casino Control Act to provide that if at the end of a show cause process, the Minister considers taking disciplinary action against a casino entity for the relevant initiating incident is not warranted, the Minister must take no further *disciplinary* action against the entity for the incident.

Amendment 9 amends clause 9(9) of the Bill in relation to section 31 of the Casino Control Act to provide that at the end of a show cause process, the Minister may recommend the Governor in Council take *one or more* of the prescribed disciplinary actions listed in the Bill, including suspend the casino lease or casino management agreement, and require the casino entity pay to the State a pecuniary penalty of not more than \$100 million. Amendment 9 also provides through the same clause for the option to appoint a special manager for the casino entity as one of the disciplinary options.

Amendment 10 amends clause 9(9) of the Bill in relation to section 31 of the Casino Control Act to provide that after considering a recommendation from the Minister about taking disciplinary action against a casino entity for an initiating incident, and the documents required to be considered, the Governor in Council must either take no further disciplinary action against the entity for the incident or take one or more of the prescribed disciplinary actions.

Amendment 11 amends clause 9(9) of the Bill in relation to section 31 of the Casino Control Act to increase the maximum pecuniary penalty that the Governor in Council may impose on a casino entity from \$50 million to \$100 million.

Amendment 12 amends clause 9(9) of the Bill in relation to section 31 of the Casino Control Act to expand the disciplinary actions available to the Governor in Council to include appointing a special manager for a casino entity.

Amendment 13 amends clause 9 of the Bill to amend sections 31(15), (17), (19), (20) and (21) of the Casino Control Act to provide the Governor in Council with the ability to direct the suspension or termination of the casino lease or casino management agreement. Such a direction must be made in writing to the parties to the casino lease or casino management agreement and specify a date on which the casino lease or casino management agreement is suspended or terminated. The lease or casino management agreement, if not sooner terminated, is suspended or terminated by force of the Casino Control Act on the date specified in the Governor in Council's direction. If a casino licence, casino lease or casino management agreement is suspended, the Governor in Council may, after considering a recommendation by the Minister, at any time cancel the balance of the period of suspension still to run or reduce the period of suspension still to run. The suspension or termination of the casino lease or casino management agreement does not affect the rights and obligations of the parties up to the time of the suspension or termination.

Amendment 13 also amends clause 9 of the Bill to insert new subsections (16A), (16B) and (16C) to section 31 of the Casino Control Act. The new subsections apply if a special manager is appointed for a casino entity and the Governor in Council takes one or more of the following disciplinary actions against the casino entity – suspend or cancel a casino licence; direct the suspension or termination of a casino lease; direct the suspension or termination of a casino management agreement.

If the suspension, cancellation or termination has not yet taken effect, then the Governor in Council may, on the recommendation of the Minister, rescind the suspension, cancellation or termination to stop it taking effect (provided the Governor in Council is satisfied the suspension, cancellation or termination is no longer required because of the remediation of the management and operations of the casino entity) or change the day the suspension, cancellation or termination takes effect. Before making a recommendation to the Governor in Council however, the Minister must consult the special manager and have regard to the casino entity's plan for the remediation of its management and operations.

Amendment 14 amends clause 9(11) of the Bill in relation to new section 31(22C). The amendment makes it clear that the suspension of a casino lease or casino management



agreement also does not relieve a casino entity of an obligation to pay a pecuniary penalty imposed under section 31.

Amendment 15 amends clause 9(12) of the Bill in relation to section 31(23) of the Casino Control Act, which currently provides that certain decisions by the Governor in Council made under section 31 are final and conclusive and cannot be appealed against, reviewed, quashed or in any way called in question in any court on any account whatsoever. Clause 9(12) on introduction amended this provision to provide that 31(23) applied to any decision of Governor in Council to “take disciplinary action against a casino entity under this section,” as was necessary to provide for new disciplinary options made available to Governor in Council. Amendment 15 further expands the application of 31(23) to any decision of Governor in Council under section 31, in part to clarify the application of 31(23) to the new subsection 16B.

Amendment 16 amends clause 10 of the Bill in relation to new section 31A regarding the costs of disciplinary action. The amendment provides that new section 31A also applies if a decision is made by the Governor in Council to suspend the casino lease or casino management agreement.

Amendment 17 amends clause 10 of the Bill in relation to new section 31A regarding the costs of disciplinary action. The amendment provides that new section 31A also applies if a decision is made by the Governor in Council to appoint a special manager for a casino entity.

Amendment 18 amends the Bill to insert a new clause 17A. New clause 17A amends section 50 of the Casino Control Act to make clear that in the event a casino licence is suspended, the obligation to pay the licence fee continues during the period of the suspension.

Amendment 19 inserts a new clause 28A into the Bill to provide for a new Part 9, Division 3 in the Casino Control Act, which will contain provisions relating to a special manager. New section 90A of new Part 9, Division 3 provides definitions for the Division.

New section 90B of new Part 9, Division 3 provides that Division 3 applies if disciplinary action is taken against a casino entity under section 31 and as part of the disciplinary action, the Governor in Council decides to appoint a special manager for the casino entity. Additionally, new section 90B makes clear that Division 3 applies regardless of whether the initiating incident for the disciplinary action occurred before or after the commencement of Division 3 or whether other disciplinary action was also taken against the casino entity.

New section 90C of new Part 9, Division 3 provides that the Governor in Council may appoint a suitably qualified person (other than a person who is an associate of the casino entity) to be a special manager on terms and conditions decided by the Governor in Council. The instrument of appointment for the special manager must state the matters prescribed in new section 90C(4). The Governor in Council may, on the recommendation of the Minister, vary the instrument of appointment. The special manager’s appointment ends if the casino licence relevant to the special manager’s appointment is cancelled or surrendered. This is because in such circumstances, there

would be no need or purpose to remediate the casino entity and an administrator would be appointed.

New section 90D of new Part 9, Division 3 provides for the functions of the special manager. These functions include to monitor the affairs of the casino entity in relation to the management and operations of a hotel-casino complex; consult on and advise in relation to the content and preparation of the casino entity's remediation plan; and monitor and report on certain matters. The special manager's instrument of appointment may include additional functions. The special manager must comply with any directions or instructions in the special manager's instrument of appointment in performing the special manager's functions.

New section 90E of new Part 9, Division 3 provides that a special manager has all the powers necessary to perform the special manager's functions. New section 90E(2) provides some examples. Additionally, the special manager may require the casino entity to give the special manager information the special manager reasonably requires to perform the special manager's functions. The special manager may also give a written direction (known as an administrative direction) to the casino entity to take or refrain from taking a particular action.

However, the special manager may only give an administrative direction if the special manager suspects there is or has been maladministration on the part of the casino entity; or believes the direction is in the best interests of the casino entity having regard to the purpose of the appointment of the special manager; or believes the direction is necessary to ensure compliance with any statutory obligation applying to the casino entity.

The casino entity must comply with an information requirement made by the special manager given to it; comply with an administrative direction given to it; and cooperate with the special manager in performing the special manager's functions. A maximum penalty of 160 penalty units applies for a contravention.

New section 90E also provides that the casino entity is not excused from complying with an information requirement from a special manager on the ground that the information is the subject of legal professional privilege. However, information does not cease to be the subject of legal professional privilege only because it is given to the special manager.

New section 90F of new Part 9, Division 3 provides the special manager must report to the Minister and the chief executive on the performance of the special manager's functions as requested and required in the special manager's instrument of appointment. The special manager's report, or anything in the report, may be disclosed only by the Minister or chief executive if the Minister or chief executive is satisfied it is in the public interest to make the disclosure. Reporting to the Minister or chief executive, or the disclosure of a report under new section 90F does not constitute a waiver of any privilege attaching to information contained in the report.

New section 90G of new Part 9, Division 3 provides that the casino entity is liable for the reasonable costs and expenses relating to the appointment of the special manager and the performance of the special manager's functions. The casino entity is also liable

for the reasonable costs and expenses incurred by the chief executive in administering the appointment of the special manager, assisting the special manager in the performance of the special manager's functions, engaging consultants in relation to the special manager, and advising the Minister on the casino entity's plan for the remediation of the management and operations of the casino entity; and for any other reasonable costs and expenses prescribed by regulation.

The casino entity may be required to pay to the State the costs and expenses in advance of the costs and expenses being incurred. The casino entity may also be required to pay to the State any shortfall. The amount of the costs and expenses the casino entity is liable for under new section 90G is a debt payable to the State. Any amount the chief executive considers to have been overpaid by the casino entity may be refunded.

New section 90H of new Part 9, Division 3 provides that a person must not obstruct the special manager in the performance of the special manager's functions unless the person has a reasonable excuse. A maximum penalty of 120 penalty units applies.

New section 90I of new Part 9, Division 3 provides that the Division applies despite anything to the contrary in the Casino Control Act, an agreement Act, a casino agreement, a casino lease, or a casino management agreement. In performing a function or exercising a power under the Division, the special manager is not required to consult with the casino entity or any other person about how the function is to be performed or whether the power should be exercised. The special manager is also not civilly liable for an act done or omission made honestly and without negligence in performing a function under the Division. Section 26C of the *Public Service Act 2008* does not apply to the special manager.

Amendment 19 also amends the Bill to insert a new Part 9, Division 4 heading in the Casino Control Act.

Amendment 20 amends clause 29 of the Bill to provide that clause 29 inserts new sections 91AA to 91AC (rather than just 91AA and 91AB) in the Casino Control Act.

Amendment 21 further amends clause 29 of the Bill to insert a new section 91AC in the Casino Control Act which provides that the Minister may direct a casino entity to prepare or amend a remediation plan for the casino entity, and if such a direction is made, the casino entity must comply or face a maximum penalty of 400 penalty units. The Minister may approve a remediation plan or an amended remediation plan only if satisfied that implementation of the remediation plan or amended remediation plan is likely to achieve the remediation of the management and operations of the casino entity. A casino entity must not change its approved remediation plan other than under a direction or approval of the Minister, and must not contravene its approved remediation plan. A maximum penalty of 400 penalty unit applies otherwise. If a casino operator has an approved remediation plan, the plan including any approved amendment, is taken to form part of a casino operator's approved control system. However, if there is any inconsistency between an approved remediation plan for a casino operator and an approved control system for the casino operator, the remediation plan prevails to the extent of the inconsistency.

Amendment 22 amends the Bill to insert a new section 114 in the Casino Control Act to provide that no compensation is payable by or on behalf of the State because of regulatory action that has an effect on an entity that is or was concerned in, or otherwise connected to, the administration, management, operation or ownership of a hotel-casino complex or casino; or the revenue earned from casino operations. The section applies despite any other provision of the Casino Control Act, or another Act, law or instrument (including an agreement to which the State and a casino entity are parties).

Amendment 23 amends clause 33 of the Bill to insert new definitions for ‘agreement Act’, and ‘casino agreement’ in the schedule Dictionary of the Casino Control Act.

Amendment 24 amends clause 33 of the Bill to insert a definition for ‘special manager’.